

Appl. No. 10/726,358
Amdt. Dated November 21, 2005
Reply to Office Action of June 24, 2005

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REMARKS/ARGUMENTS

Applicant and undersigned counsel wish to convey their thanks and express their appreciation to Examiner Lamb not only for her very helpful assistance in the telephone interview with counsel on November 15, 2005, but also in her subsequent facsimile transmissions to counsel summarizing the substance of the November 15 telephone interview and providing counsel with a current schedule of Patent and Trademark Office fees.

This Amendment After Final Action under 37 C.F.R. §1.116(b)(2) is submitted to present claim 9 in better form for consideration on appeal if the proposed amendments to this claim are entered. Examiner Lamb and counsel discussed these proposed amendments in the November 15 telephone interview.

Further in this respect, counsel apologizes to Examiner Lamb for his failure in amending claim 9 in the February 22, 2005 Amendment to have entered salient features of the invention. Please note in this respect that claim 9, if amended as requested herewith, will recite:

...replenishing said depleted preservative in said work tank with more
preservative to reestablish said predetermined preservative
concentration... (emphasis supplied)

Nowhere, in any of the three references* cited with respect to claim 10 (now proposed for incorporation in the text of amended claim 9) is there any suggestion of adding preservative to a depleted fluid to reestablish a predetermined preservative concentration in the fluid. Yes, Bongrand et al. '319 does teach that "the container b is filled, through the intermediary of the filling vat i..." (Bongrand et al. '319 p. 2, lines 37 and 38), but nowhere in Bongrand et al. '319 and the other two references applied to the subject matter of the proposed amendments to claim 9 is there any suggestion that the charge from the filling vat i is controlled to restore a fluid and a depleted preservative to a predetermined preservative concentration.

There are, moreover, further structural distinctions between applicant's structure in the proposed amendments to claim 9.

Illustratively, neither Bongrand et al. '319 nor Dahlgren '360 show or suggest the heater for heating the fluid and the preservative in the work tank to a predetermined temperature as recited in the proposed amendment to claim 9. As further recited in the proposed amendment to claim 9, (as disclosed in the pending application at p. 4, line 24 and p. 6, line 22) the claimed heater is "...external to said work tank..." further to distinguish structurally over the Vinden et al.

* U.S. Patent No. 3,801,360 granted April 2, 1974 to S. Dahlgren for "Method for Controlling the Level of the Pressure in the Low Pressure Phase of an Oscillating Pressure Impregnating Process"; U.S. Patent No. 1,986,319 granted January 1, 1935 to J.E.C. Bongrand et al. for "Process of Manufacture of Threads of Textile Material"; and U.S. Patent No. 6,235,403 granted May 22, 2001 to P. Vinden et al. for "Process of Treating Wood with Preservative".

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'403 citation which only teaches an in-tank heater or a heat pump in the agitation line.

In sum, claim 9, amended as proposed herein, not only recites a salient feature of the claimed invention – reestablishing the predetermined preservative concentration – but also a specific type heater not shown or suggested in Vinden et al. '403 or either of the other two references cited.

Accordingly, the Examiner is respectfully urged to enter the amendments submitted herewith and allow claim 9. Early allowance of this application is earnestly solicited.

The Examiner is, moreover, requested to telephone undersigned counsel at the number noted below if it will advance the prosecution of this application.

Respectfully submitted,



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